

The Effect of Severance Pay on Unemployment Benefits



What the law says: This issue is covered by Sections 48 and 27(c) of the *Michigan Employment Security Act*. The law says that severance pay, wage continuation pay, and any other similar payment made by an employer as continuing wages or other monetary consideration as the result of a worker's separation from employment, except for Supplemental Unemployment Benefits (SUB), is "remuneration" which must be used in determining whether the worker is an "unemployed person" and must also be used to reduce the worker's unemployment benefits. Severance payments are also used as qualifying wages to establish a claim for benefits.

Allocation of Severance Pay by the Employer:

The law provides that the severance payment may be allocated by the employer to a week or weeks (regardless of when in the past the severance payment was actually made). This period to which the payment may be allocated can be specified by a contract or collective bargaining agreement. If there is no contract or agreement specifying the period of allocation, then the employer may designate any period to which the severance payment may be allocated, and is not required to notify workers of the allocation or impact on benefits.

How Allocated Severance Pay Reduces UI Benefits:

The severance payment, like any other kind of "remuneration," will reduce unemployment benefits otherwise payable in the weeks to which the severance payment is allocated. If there is no allocation by contract or by the employer, then the reduction in unemployment benefits will occur only in the week in which the severance payment is actually made. The amount benefits will be reduced by the severance payment is determined in the following way:

- If the severance payment attributed to a week equals or exceeds 1.6 times the claimant's weekly benefit amount, then the unemployed worker is entitled to no unemployment benefits for the week.

- If the claimant's earnings are less than 1.6 times the claimant's weekly benefit amount but greater than the claimant's weekly benefit amount, then the full amount of the severance payment is subtracted from 1.6 times the claimant's weekly benefit amount (and the claimant's balance of weeks of benefits will be reduced by 1 week, if he/she claims benefits for that week).
- If the severance payment is equal to, or less than, the claimant's weekly benefit amount, then 0.4 of the severance payment is subtracted from the claimant's weekly benefit amount (and the balance of weeks of benefits will be reduced by 1 week if he/she claims benefits that week).

Lump Sum Versus Continuing Payments:

If the employer makes a lump sum severance payment to a worker at the time the worker is separated from employment, and allocates that severance payment to a week or weeks other than the week in which the payment is made, then the worker's unemployment benefits otherwise payable for that week will be reduced by the severance payment allocated to that week. The amount unemployment benefits will be reduced in a week depends upon how much of the severance payment is allocated by the employer to that week.

If the employer makes a lump sum severance payment to a worker at the time the worker is separated from employment, but does not allocate that severance payment to a week or weeks, then the severance payment will reduce the unemployment benefits only in the week in which the lump sum severance payment is made.

If the employer makes weekly or monthly payments of severance pay (sometimes referred to as salary or wage continuation payments), that severance payment will be used to reduce unemployment benefits in the week in which it is paid, unless the employer otherwise allocates the severance payments to other weeks.

The information on this sheet is intended to provide a general understanding of the subject matter.

It does not have the force or effect of law or regulation.

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Example 1:

The unemployed worker becomes unemployed after working full-time during week ending September 8, 2012. The employer pays the unemployed worker \$5,000 in severance payment in that week and does not allocate the severance payment to any period. The unemployed worker files a new claim the following week. The claimant's benefits are not reduced, as the severance payment was paid prior to the start of the claim, and was not allocated to any period for which the unemployed worker was claiming benefits. The severance pay could be used as wages for establishing a future claim.

Example 2:

Same facts as in Example 1, except that the employer allocates the lump sum severance payment made the last week of employment to the next 6 weeks. Unless the employer specifies how much will be allocated per week, the Agency will equally allocate the payment over the 6 weeks, and reduce benefits in accordance with the formula explained above. The allocated payment could be used for benefit payment purposes on a later claim.

Example 3:

If the employer were to make wage continuation payments weekly, for the 1-year period following separation, benefits would be reduced accordingly in each week. Those payments could be used as "wages" for a later benefit claim.

Proof at the Hearing:

The employer is in the best position to know whether severance pay was allocated, and the amount that was allocated to each week of unemployment, and the burden is therefore on the employer to provide that information.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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